

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

SEP 16 1998

In the Matter of	)	
	)	
1998 Biennial Regulatory Review	)	IB Docket No. 98-148
Reform of the International Settlements	)	
Policy and Associated Filing Requirements	)	
	)	
Regulation of International	)	CC Docket No. 90-337
Accounting Rates	)	
_____	)	

**COMMENTS OF AMERITECH**

Ameritech respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice"), FCC 98-190, released August 6, 1998, in the above-captioned proceeding. In the Notice, the Commission proposes significant changes to its International Settlements Policy ("ISP") and associated rules as part of its congressionally-mandated biennial review of its rules governing providers of telecommunications to identify and eliminate rules and procedures that are no longer necessary. Ameritech has long supported Commission efforts to streamline its rules and eliminate unnecessary and overly burdensome regulatory requirements on common carriers. Ameritech therefore generally supports the Commission's proposal to modify the ISP and associated rules, with certain modifications.

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**I. The Commission Should Eliminate the ISP for International Routes Where There is Little Risk that Carriers Could Conclude Settlement Arrangements that Would Adversely Affect Competition in the United States**

The Commission proposes no longer to apply the ISP to arrangements between U.S. carriers and foreign carriers that lack market power in WTO member countries. The Commission further proposes to eliminate the ISP on routes where the Commission has already authorized international simple resale ("ISR"). Additionally, the Commission proposes, in those circumstances in which it declines to apply the ISP, to exempt U.S. carriers from filing contracts and accounting rate information under sections 43.51 and 64.1001 of the Commission's rules. Under the Commission's proposal, therefore, U.S. carriers would be free to negotiate commercial settlement agreements with foreign carriers that lack market power in WTO member countries, or in countries in which the Commission has authorized ISR.

Ameritech generally supports the elimination of the ISP on international routes where competition would be restrained by its continued application. At the same time, however, the Commission must ensure that elimination of the ISP does not allow carriers to conclude settlement arrangements that affect adversely competition in the United States. As the Commission recognizes, the ISP may limit competition among U.S. international carriers by reducing incentives for U.S. carriers to negotiate low settlement rates and discourage retail price competition by ensuring that all carriers have a clear knowledge of a significant component of their competitors' costs. Additionally, the proportionate return component of the ISP may create a barrier to new entry into the market for international services by temporarily increasing the cost structure of new entrants, which initially do not receive the benefits of proportionate return because they

have no record of outbound traffic. Under appropriate circumstances, elimination of the ISP will, therefore, drive down international settlement rates, promote competition among U.S. international carriers, and lower retail rates to consumers by reducing rates for terminating international calls closer to cost. Accordingly, Ameritech supports the Commission's initiative to modify the ISP to permit innovative, market-based settlement arrangements.

The Commission's proposals, however, go too far because they would permit U.S. international carriers to conclude settlement arrangements that could adversely affect competition in the United States. By focusing exclusively on whether a carrier on the foreign end of a particular route has market power in a relevant market, the Commission's proposals fail to account for the fact that a U.S. carrier that negotiates an alternative settlement arrangement affecting a significant portion of traffic along a particular international route may be able to gain an unfair advantage over other U.S. carriers. As the Commission recognized in the *Flexibility Order*, a U.S. carrier negotiating a settlement arrangement affecting a significant portion of traffic along a particular route "may be in a position to extract anticompetitive special concessions from foreign carriers to the detriment of other U.S. carriers."<sup>1</sup>

The Commission should therefore modify its proposals to reform the ISP to ensure that U.S. international carriers cannot conclude unique settlement arrangements that could adversely affect competition in the U.S. international services market.

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<sup>1</sup> *Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II, Fourth Report and Order, 11 FCC Rcd 20,063, 20,081 (1996) ("*Flexibility Order*").

Specifically, consistent with the safeguards adopted in *Flexibility Order*,<sup>2</sup> the Commission should modify its proposals to eliminate the ISP only: (1) for settlement agreements that affect less than 25 percent of the traffic on a particular route<sup>3</sup> and which are between U.S. carriers and foreign carriers from WTO member countries that permit multiple operator entry to the relevant foreign telecommunications markets; or (2) for routes where transparent, nondiscriminatory, cost-based international termination charges are available on both ends of the route, regardless of whether carriers at either end possess market power. This approach would promote the Commission's objectives of lowering consumer prices by encouraging innovative, efficient settlement arrangements, while preventing arrangements that could adversely affect competition in the U.S. market. As the Commission recognized in the *Flexibility Order*, the 25 percent threshold is high enough to encourage carriers to negotiate alternative arrangements, but low enough to ensure that a U.S. carrier cannot use such an arrangement to obtain an unfair advantage in the U.S. market.<sup>4</sup> Similarly, eliminating the ISP for routes where nondiscriminatory termination rates are available to all carriers on both ends of the route would, potentially, provide carriers increased flexibility to enter alternative settlement

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<sup>2</sup> In the *Flexibility Order*, the Commission mandated full transparency of the terms and conditions of alternative settlement arrangements affecting a significant portion of the traffic on a particular route in order to safeguard against the potential anticompetitive effects of such arrangements. Specifically, the Commission required that a copy of all alternative settlement arrangements affecting more than 25 percent of inbound or outbound traffic along a particular route to be filed with the Commission and made public. *Id.* The Commission further required that any such arrangement not contain unreasonably discriminatory terms and conditions. *Id.* at 20,081-82.

<sup>3</sup> Consistent with the *Flexibility Order*, carriers should not be permitted to circumvent the 25 percent threshold by negotiating two or more agreements with one individual correspondent carrier or its affiliate, each of which affects less than 25 percent of the traffic on a particular route. *Id.* at 20,082. Similarly, once a carrier has concluded a settlement agreement that exceeds the threshold for a particular route, the ISP should apply to any subsequent settlement agreement between that carrier and any correspondent that affects traffic along the route.

<sup>4</sup> *Id.*

arrangements on a broader range of routes, while, at the same time, preventing carriers at either end of the route from leveraging any market power they might possess to disadvantage competing carriers.

The foregoing criteria are also better bases for eliminating the ISP than the availability of ISR. While the Commission's ISR policy was an effective first step to lower settlement rates, the market for international services has evolved since its adoption, with a trend toward cost-based termination charges. The Commission now has an opportunity to promote competition further by adopting the criteria advanced by Ameritech. Whereas ISR provides no assurance that U.S. carriers will pay cost-based rates to terminate international traffic in foreign countries, published cost-based termination charges and settlement arrangements that do not affect a significant proportion of the traffic on a particular route are much more likely to approach that competitive ideal.<sup>5</sup>

Ameritech generally supports the Commission's proposal to exempt U.S. carriers from filing contracts and accounting rate information under sections 43.51 and 64.1001 in those circumstances in which it has eliminated the ISP. To the extent the Commission declines to exercise regulatory oversight over settlement arrangements between U.S. and foreign carriers, there is simply no reason to maintain a filing requirement. The Commission should, however, continue to require filing of settlement arrangements for arrangements that affect more than 25 percent of the traffic on a particular route, or summaries of their terms and conditions. As the Commission correctly observed in the *Flexibility Order*, "[b]y requiring increased scrutiny of alternative arrangements affecting

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<sup>5</sup> Notice, FCC 98-190 at para. 5.

a significant percentage of traffic on a given route, this safeguard will further mitigate potential anticompetitive effects of our ISP flexibility policy.”<sup>6</sup>

## **II. Revisions to the Flexibility Policy**

The Commission proposes to modify its flexibility policy to limit the filing of commercial information on routes that qualify for flexibility and do not trigger the flexibility safeguards. The Commission further seeks comment on whether it should only require public availability of flexible arrangements entered into by U.S. carriers with foreign affiliates or joint venture partners that possess market power in the foreign market. Additionally, the Commission proposes to modify the flexibility policy, if it adopts the foregoing proposals, to require only that a carrier certify that the arrangement does not trigger its flexibility safeguards and to identify the destination market. Under this proposal, other parties could file comments to rebut the presumption in favor of flexibility, but not comment on the nature of the flexible arrangement itself.

Ameritech believes that these proposed modifications to the flexibility policy would not be necessary if the Commission adopts Ameritech’s proposed modifications to the ISP. To the extent that a carrier remains subject to the ISP, or the agreement covers more than 25 percent of the traffic on a particular route, the carrier should be required to file copies of alternative settlement arrangements or summaries of the terms and conditions thereof. Such information is necessary to ensure that such arrangements are not discriminatory and will not adversely affect competition in U.S. markets.

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<sup>6</sup> *Id.* at 20082.

### **III. Application of the No Special Concessions Rule to Arrangements that Are Not Subject to the ISP**

The Commission seeks comment on the effect of adopting its proposals to revise the ISP on the No Special Concessions rule. In particular, the Commission asks whether it should maintain the No Special Concessions rule for arrangements between U.S. carriers and foreign carriers with market power if it adopts its proposal not to apply the ISP and related filing requirements on ISR routes.

As a general matter, Ameritech supports elimination of the No Special Concessions rule in situations where the ISP does not apply. Nevertheless, if the Commission adopts its proposal not to apply the ISP on ISR routes, the Commission should retain the No Special Concessions rule for arrangements with foreign carriers with market power in order to ensure that all U.S. carriers can obtain settlement arrangements on nondiscriminatory terms and conditions because the Commission's approval of ISR on particular routes does nothing to ensure the availability of cost-based termination charges.

### **IV. The Commission Should No Longer Require Carriers Seeking Approval of Changes In Their Accounting Rate Arrangements to Serve Copies of Their Filings on Facilities-Based Carriers Providing Service on the Same Route**

The Commission proposes to eliminate the requirement that carriers seeking approval for changes in their accounting rate arrangements must serve copies of their modification requests or notification filings on all facilities-based carriers providing service on the same route. The Commission further proposes to make information concerning accounting rate filings available over the Internet, and/or to issue a public notice when it receives accounting rate filings. Ameritech supports these proposals. In most cases, accounting rate information will still be filed with the Commission, and

available to interested parties via the Internet on the Commission's web page. Thus, interested parties will still have access to detailed information regarding accounting rate filings. To ensure that interested parties receive adequate notice of accounting rate filings, the Commission should adopt its proposal to issue a public notice when it receives accounting rate filings. If these proposals are adopted, the service requirement will no longer be necessary.

**V. The Commission Should Reject AT&T's Proposal to Eliminate the Approval Criteria and Filing Obligations Imposed on Flexible Arrangements that Involve 25 Percent or More of Outbound Traffic**

In light of its proposals to modify the ISP, the Commission seeks further comment on petitions to reconsider the competitive safeguards adopted in the *Flexibility Order*. In particular, the Commission seeks comment, *inter alia*, on AT&T's proposal to eliminate the approval criteria and filing obligations imposed on flexible arrangements that involve 25 percent or more of outbound traffic.

The Commission should reject AT&T's proposal. In the *Flexibility Order*, the Commission properly recognized that carriers with a significant share of the traffic on a particular route might be able to negotiate alternative settlement arrangements that adversely affect competition in the U.S. market for international services. At the same time, the Commission sought to afford all U.S. carriers flexibility to negotiate alternative arrangements that would enhance competition. It therefore permitted large, and even dominant, carriers to negotiate alternative arrangements, provided they comply with certain safeguards to protect against carriers with a significant share of the market extracting anticompetitive special concessions to the detriment of other U.S. carriers. Specifically, the Commission required carriers to file with the Commission a copy of all

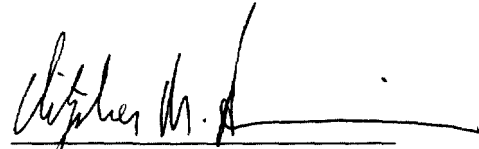


alternative arrangements affecting more than 25 percent of the inbound or outbound traffic on a particular route. Further, it required that all such arrangements not contain unreasonably discriminatory terms and conditions. Ameritech believes that the Commission's current flexibility policy strikes an appropriate balance between the goals of encouraging alternative arrangements that offer more efficient terms for terminating international traffic, and ensuring that such arrangements not adversely affect competition in the U.S. market for international services. Accordingly, the Commission should reject AT&T's proposal.

#### **VI. Conclusion**

Ameritech applauds the Commission efforts in this and other proceedings to streamline its rules and eliminate unnecessary, burdensome regulatory requirements on providers of international services. Ameritech therefore supports the Commission's proposal to modify the ISP and associated rules, with the modifications recommended above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher M. Heimann", is written over a horizontal line.

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